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EXAMINER

SHERMAN, STEPHEN G

ART UNIT

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/748,686	<b>Applicant(s)</b> FITZMAURICE ET AL.	
	<b>Examiner</b> STEPHEN G. SHERMAN	<b>Art Unit</b> 2629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 26 is/are allowed.
- 6) ☒ Claim(s) 1-25 and 27-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/29/2008</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

1. This office action is in response to the amendment filed 29 September 2008.  
Claims 1-33 are pending.

### ***Response to Arguments***

2. Applicant's arguments filed with respect to the 112, 1<sup>st</sup> paragraph rejection of claim 32 have been fully considered but they are not persuasive.

On page 11 of the response the applicant argues that Figure 1 shows a graphical interface situated at the bottom left of a screen while Figure 2 shows one situated in the bottom right of a screen and thus there is support. The examiner respectfully disagrees. The claim is claiming an interface with BOTH a first interface at a first end of a range and a second interface at a second end of the range, which is not supported by the specification. Figures 1 and 2 each show only ONE interface not a first AND a second as is claimed, and thus the specification does not support AN interface comprising a first AND a second interface, but rather has An interface with EITHER one in a left or one in a right, but NOT both at the same time. The examiner notes that the applicant seemingly has correctly claimed this feature in newly added claim 33 by stating the word OR and not AND.

3. Applicant's arguments filed with respect to the prior art rejections have been fully considered but they are not persuasive.

On pages 11-14 of the response the applicant's only argument is that Miyashita cannot disclose "a graphical user interface area located in a lower corner responsive to a natural motion by a user" because in the displayed menu in Miyashita the menu is located in the corner to avoid the image from being impaired. The examiner respectfully disagrees. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Miyashita was only used to teach of the interface being located in a display corner, not that it is located responsive to a natural motion by a user. The applicant cannot attack the reference for not including a limitation which the reference was not used to teach. Thus, Miyashita alone does not teach this feature, but the COMBINATION of the references does teach "a graphical user interface area located in a lower corner responsive to a natural motion by a user", and thus the rejection is proper.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claim 32 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 32 states "a first graphical user interface located responsive to a natural motion by a user associated with a first end of a range of the natural motion; and second graphical user interface located responsive to the natural motion by a user associated with a second end of the range of the natural motion; and said first and second graphical user interfaces each comprising: an arc shaped persistent graphic defining the interface area where the arc is substantially perpendicular to a natural motion path of the natural motion; and controls initiating an action, located in the interface area and accessible via the natural motion" which is not described in the specification. The specification only shows one interface menu located at an end range of a user motion that is perpendicular to the motion arc. The specification does not have support for a second menu being located at the other end also being perpendicular. The specification explains of a pop-up circular menu, however, this menu is not at the other end of the user motion range. The specification also explains of an overflow menu being located on the natural motion arc, however, this menu is not perpendicular to the natural motion arc. Thus, the specification does not contain support for the limitations of claim 32.

***Claim Rejections - 35 USC § 101***

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claim 27 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 27 is directed to non-statutory subject matter because the newly amended paragraph [0071] of the applicant's specification describes that the term "computer readable storage" refers to any storage on which the process can be stored and distributed, including that the processes can be distributed via downloading over a network. The processes being distributed via downloading as described by the applicant relates the storage to being described as a signal, where signals are not considered to fall into one of the four statutory classes of invention, and are therefore considered non-statutory.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 1-9, 11-14, 20-21, 23-24, 28-29, 31 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pitroda (US 2002/0097277) in view of Miyashita et al. (US 2002/0122158) and further in view of Selker (US 2002/0122072).

**Regarding claim 1**, Pitroda discloses an interface, comprising:

a graphical user interface area located in a display corner responsive to a natural motion by a user associated with an end of a range of the natural motion (Figure 11A shows a graphical user interface area located in the upper left corner which is responsive to the end range of a natural motion of a user that is left handed.) and, comprising:

an arc shaped graphic starting near a first display edge and ending near a second display edge and defining the interface area where the arc is substantially perpendicular to a natural motion path of the natural motion (Figure 11A shows a

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graphical user interface area located in the upper left corner that has an arc shaped graphic which starts near the left display edge and ends near the upper display edge, where if a user is left handed, then the interface graphic would be associated with and perpendicular to their natural motion path.); and

controls initiating an action located in the interface area and accessible via the natural motion (Figure 11A shows that there are controls labeled “primary universe” located in the interface area which are accessible via the natural motion path of a left handed user, where paragraph [0133] explains that the “primary universes” initiate an action when selected [changes the display to show child universes of the selected primary universe].).

Pitroda fails to teach wherein the graphical user interface area is located in a lower display corner.

Miyashita et al. disclose of an interface comprising a graphical user interface area located in a lower display corner (Figures 18 and 19 and paragraph [0141]).

Therefore, it would have been obvious to “one of ordinary skill” in the art at the time the invention was made to make the interface taught by Pitroda to be located in a lower display corner as taught by Miyashita et al. in order to allow filed to be selected without impairing the view of the image data being displayed (Miyashita et al., paragraph [0141]).

Pitroda and Miyashita et al. fail to teach wherein the graphical user interface area comprises an arc shaped persistent graphic.



Selker discloses of an interface comprising a graphical user interface area comprises an arc shaped persistent graphic (Paragraph [0046] explains that the menu shown in Figure 2 can be fixed, i.e. persistent.).

Therefore, it would have been obvious to “one of ordinary skill” in the art at the time the invention was made to make the interface taught by the combination of Pitroda and Miyashita et al. persistent as taught by Selker in order to allow for the control options to be available to a user at all times, while still not impairing the user’s view of the display.

***Regarding claim 2***, Pitroda, Miyashita et al. and Selker disclose an interface as recited in claim 1.

Selker also discloses wherein the natural motion is a curve associated with movement of a hand of the user when an elbow of the user is pivoted (When anyone places their elbow on a surface, they will produce a natural motion curve, and as explained above, paragraph [0046] states “The present invention should not be limited by size, shape, position on a computer display, number of levels...”. Thus the position of the arc shaped menu of Figure 2 could be anywhere on the screen, which covers the limitation that the graphical user interface area is located responsive to a natural motion by a user associated with an end range of the natural motion, where the natural motion is a curve associated with movement of a hand of the user when an elbow of the user is pivoted.).

**Regarding claim 3**, Pitroda, Miyashita et al. and Selker disclose an interface as recited in claim 2.

Selker also discloses wherein a location responsive to the natural motion of the user hand is defined by the natural motion passing through a substantial center area of a display area (Paragraph [0046] explains that the position on the display of the menu is not limited meaning that the interface could be located somewhere with respect to a user's hand passing through a center of the display.).

**Regarding claim 4**, Pitroda, Miyashita et al. and Selker disclose an interface as recited in claim 1.

Selker also discloses wherein the natural motion is a curve associated with movement of a hand of the user when an elbow of the user is pivoted and one of a wrist of the user is rotated and fingers of the user are moved (Please refer to the rejection of claim 2, where if the user's entire arm past the elbow is moving then the wrist and fingers are moved as well.).

**Regarding claim 5**, please refer to the rejection of claim 1.

**Regarding claim 6**, Pitroda, Miyashita et al. and Selker disclose an interface as recited in claim 1.

Selker also discloses wherein the graphic is a shape corresponding to an arc shaped curve and the controls are positioned in accordance with the curve (Figure 2).

**Regarding claim 7**, Pitroda, Miyashita et al. and Selker disclose an interface as recited in claim 6.

Selker also disclose wherein a radius of the arc shaped curve is at least a radius of a menu of one of the controls (Figure 2).

**Regarding claim 8**, Pitroda, Miyashita et al. and Selker disclose an interface as recited in claim 6.

Selker also discloses wherein a control closest to a display area is positioned along the curve at least a radius of a menu of the control from a display edge (Figure 2 and paragraph [0046]).

**Regarding claim 9**, Pitroda, Miyashita et al. and Selker disclose an interface as recited in claim 1.

Selker also discloses wherein a menu associated with one of the controls has a layout responsive to the curve (Figure 2).

**Regarding claim 11**, Pitroda, Miyashita et al. and Selker disclose an interface as recited in claim 1.

Miyashita et al. also disclose wherein the interface is located in a lower left corner of a display area (Figures 18 and 19), while Pitroda et al. also disclose the controls of the interface are arranged as one of a convex arc across the corner, a

concave arc across the corner, a line across the corner, an array in the corner, a convex corner across the corner, a convex arc with a linear portion across the corner, a sectioned pie in the corner, a sectioned pie in the corner and extending across the display area, and a rotatable circle intersecting both sides of the corner (Figure 11A shows that the menu items are located along the arc which is convex across the corner.).

**Regarding claim 12**, please refer to the rejection of claim 1, and furthermore Figure 11A of Pitroda shows the control zones labeled in the Figure as “primary universe” have a shape responsive to an approach arc, which would be perpendicular to a “dominant arc” of a user’s natural motion on the display, where Figure 12 of Pitroda shows that the “primary universe” controls provide for the “pop-up” of the “secondary universe” which is a radius.

**Regarding claim 13**, Pitroda, Miyashita et al. and Selker disclose the interface as recited in claim 12.

Selker et al. also disclose wherein the zone shape comprises one of a wedge, a curved sides triangle and a curved sided trapezoid (Figure 2).

**Regarding claim 14**, Pitroda, Miyashita et al. and Selker disclose the interface as recited in claim 1.

Pitroda also discloses wherein the zones have non-coincident, dominant arc approach paths (Figure 11A shows that each “primary universe” would have a different arc approach paths by a user.).

**Regarding claims 20 and 27**, please refer to the rejection of claims 1 and 12 and furthermore if the interface is located with controls as illustrated in the rejection of claims 1 and 12, then the controls would have been mapped as such and there would be a computer readable storage for controlling the mapping.

**Regarding claim 21**, this claim is rejected under the same rationale as claim 5.

**Regarding claim 23**, Pitroda, Miyashita et al. and Selker disclose a method as recited in claim 20.

Pitroda also discloses wherein the mapping maps controls on the arc responsive to a function of the controls (Figure 11A shows that the controls are mapped onto the arc-shaped menu according to their function, i.e. primary universe, secondary universe, etc.).

**Regarding claim 24**, Pitroda, Miyashita et al. and Selker disclose a method as recited in claim 20.

Pitroda also discloses the method further comprising minimizing the interface responsive to activation of a minimize control (Paragraph [0131] explains that when a

section of the sphere is selected it is moved to a corner of the display, therefore minimizing it.).

**Regarding claim 28**, please refer to the rejection of claims 1, 5 and 12, where Pitroda shows a display in Figure 11A, as also shown in Figures 18 and 19 of Miyashita et al., and where there is inherently a processor in a computer which will operate the display and will position the interface of the display.

**Regarding claim 29**, please refer to the rejection of claim 23 where their positioning is inherently performed by the processor.

**Regarding claim 31**, please refer to the rejection of claim 1, and furthermore Figure 11A of Pitroda covers the limitation of “an arc shaped display edge intersecting menu bar interface graphic”.

**Regarding claim 33**, this claim is rejected under the same rationale as claim 1.

11. Claims 22, 25 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pitroda (US 2002/0097277) in view of Miyashita et al. (US 2002/0122158) and further in view of Selker (US 2002/0122072) and Keely, Jr. et al. (US 6,337,698).

**Regarding claim 22**, Pitroda, Miyashita et al. and Selker disclose a method as recited in claim 21.

Pitroda, Miyashita et al. and Selker fail to teach wherein the corner is lower right corner for a left-handed person and a lower left corner for a right-handed person.

Keely, Jr. et al. disclose a graphical user interface located in a corner of a display wherein the corner is lower right corner for a left-handed person and a lower left corner for a right-handed person (Figs. 10-12, see col. 6, lines 45-54 and col. 7, lines 7-12, where it is clear that the menu goes in the lower right corner for a left-handed person and the lower left corner for a right-handed person).

Therefore, it would have been obvious to “one of ordinary skill” in the art at the time the invention was made to made the interface graphic taught by the combination of Pitroda, Miyashita et al. and Selker located in a left corner for a right handed user and a right corner for a left handed user as taught by Keely, Jr. et al. in order to allow for the maximum comfort of the user in operating the menu.

**Regarding claim 25**, Pitroda, Miyashita et al. and Selker disclose a method as recited in claim 20.

Pitroda, Miyashita et al. and Selker fail to teach of displaying a menu upon a touch input and allowing a user to select an item of the menu, displaying a menu and performing an interaction upon a dwell input, and performing a function upon a stroke input

Keely, Jr. et al. also disclose:

displaying a menu upon a touch input (see col. 6, lines 54-55) and allowing a user to select an item of the menu (Fig. 10, shows the path a user takes to select an item);

displaying a menu and performing an interaction upon a dwell input (col. 7, lines 50-57, where the pen leaving the surface can minimize the menu therefore allowing the pen to dwell on the surface allows the user to interactively maintain the display of the menu); and

performing a function upon a stroke input (col. 7, lines 27-30, where the user makes a selection via a stroke input).

Therefore, it would have been obvious to “one of ordinary skill” in the art at the time the invention was made to use the inputting method taught by Keely, Jr. et al. with the interface method taught by the combination of Pitroda, Miyashita et al. and Selker in order to allow for easy and intuitive user input into the computer system.

**Regarding claim 30**, please refer to the rejection of claim 25, where Keely, Jr. et al. also disclose an apparatus further comprising a stylus-based input system coupled to the processor and the display (col. 3, lines 49-50), and activating the controls responsive to a tap of a stylus on one of the controls (see col. 6, lines 54-55).

12. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pitroda (US 2002/0097277) in view of Miyashita et al. (US 2002/0122158) and further in view of Selker (US 2002/0122072) and Kurtenbach (US 5,689,667).



**Regarding claim 10**, Pitroda, Miyashita et al. and Selker disclose an interface as recited in claim 1.

Pitroda, Miyashita et al. and Selker fail to explicitly teach a marking menu associated with one of the controls having a layout where a downward stroke brings up additional tool palettes and/or dialogs.

Kurtenbach discloses a marking menu associated with one of the controls has a layout where a downward stroke brings up additional tool palettes and/or dialogs (see col. 3, lines 35-60, where a user can bring up a new sub-menu, which constitutes a dialog, by making a stroke towards a menu item but not lifting up the pen).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teachings of Kurtenbach in the device taught by the combination of Pitroda, Miyashita et al. and Selker to have a commonly known method of bringing up an a pop-up menu with a single stroke for allowing additional controls of the menu to be utilized.

13. Claims 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pitroda (US 2002/0097277) in view of Miyashita et al. (US 2002/0122158) and further in view of Selker (US 2002/0122072) and Anderson et al. (US 5,828,360).

**Regarding claim 15**, please refer to the rejection of claim 1, and furthermore Pitroda, Miyashita et al. and Selker fail to teach the controls comprising a tool control

providing a menu for selecting a drawing tool of the application, and a color control providing a menu for selecting paint color applied by a drawing tool of the application.

Anderson et al. disclose different categories of menu items in an arc-shaped menu (Fig. 3) and a menu including a tool control providing a menu for selecting a drawing tool of the application and a color control providing a menu for selecting paint color applied by a drawing tool of the application (Fig. 3, item 31c, see col. 5 lines 13-28, where the menu item 31c provides the sub-menu shown in the figure with the different drawing tools and for selecting the color.).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teachings of Anderson et al. in the menu of Pitroda, Miyashita et al. and Selker in order to have different types of menu items in an arc-shaped menu in order to add the extra functions provided by the menu items and so that these menu items would be easily accessible to hand movements that a user can make and remember easily (see Anderson col. 2, lines 1-3).

**Regarding claim 16**, Pitroda, Miyashita et al., Selker and Anderson et al. disclose an interface as recited in claim 15.

Anderson also discloses an interface with a minimize control, an edit control providing an undo function (Fig. 3 shows an undo control included in the menu), and Keely, Jr. et al. also disclose a page control providing a page change function for drawing pages of the application (see col. 8, lines 46-51) and a tool type control and providing a menu for selection a tool type of the application (Fig. 8, 74, see col. 5, lines

53-54, where the select tool is a "tool type" control because it provides options for selecting tool types such as cut, copy, and paste).

However, Pitroda, Miyashita et al., Selker and Anderson et al. fail to teach the relative locations of each control as discussed in the claim. However, at the time of the invention it would have been obvious to a person of ordinary skill in the art to relocate the menu items as described in the claim since such a modification would have only involved a mere change in the location of the menu items. Applicants have not disclosed that the particular positioning of the menu items solves any stated problem, provides any advantage, or used for any particular purpose. Further, a change in location is generally recognized as being within the level of ordinary skill in the art, see *In re Japiske*, 86 USPQ 70 (CCPA 1950). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Pitroda, Miyashita et al., Selker and Anderson et al. to obtain the invention as specified in the above claim.

**Regarding claim 17**, Pitroda, Miyashita et al., Selker and Anderson et al. disclose an interface as recited in claim 16.

Pitroda also discloses wherein the graphic comprises a arc-shaped band (Figure 11A).

**Regarding claim 18**, Pitroda, Miyashita et al., Selker and Anderson et al. disclose an interface as recited in claim 16.

Anderson et al. also disclose wherein pop-up menus pop-up in association with the selected control and at a distance from side and bottom edges of the graphic to allow all menu commands to be displayed (Figure 3 shows that the menu 32 pops up when 31c is selected which allows all controls to be seen.).

14. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pitroda (US 2002/0097277) in view of Miyashita et al. (US 2002/0122158) and further in view of Selker (US 2002/0122072), Anderson et al. (US 5,828,360) and Kurtenbach (US 5,689,667).

**Regarding claim 19**, please refer to the rejection of claims 15 and 16 and furthermore Anderson et al. also disclose different categories of menu items in an arc-shaped menu (Fig. 3) and a menu including a tool control that provides a menu for selecting a drawing tool (Fig. 3, item 31c, see col. 5 lines 13-28, where the menu item 31c provides the sub-menu shown in the figure with the different drawing tools), a minimize control (Fig. 3, where the 'miniview' control is a type of minimize control), and an undo control (Fig. 3 shows an undo control included in the menu).

Pitroda, Miyashita et al., Selker and Anderson et al. fail to teach a marking menu associated with one of the controls has a layout where a downward stroke brings up additional tool palettes and/or dialogs.

Kurtenbach discloses a marking menu associated with one of the controls has a layout where a downward stroke brings up additional tool palettes and/or dialogs (see

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col. 3, lines 35-60, where a user can bring up a new sub-menu, which constitutes a dialog, by making a stroke towards a menu item but not lifting up the pen).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teachings of Anderson et al. and Kurtenbach in the menu of Pitroda, Miyashita et al., Selker and Anderson et al. in order to have different types of menu items in an arc-shaped menu so that these menu items would be easily accessible to hand movements that a user can make and remember easily (see Anderson col. 2, lines 1-3) and to have a commonly known method of bringing up a *pop-up menu with a single stroke*.

However, Pitroda, Miyashita et al., Selker and Anderson et al. nor Kurtenbach teach the location of the tools relative to each other. However, at the time of the invention it would have been obvious to a person of ordinary skill in the art to relocate the menu items as described in the claim since such a modification would have only involved a mere change in the location of the menu items. Applicants have not disclosed that the particular positioning of the menu items solves any stated problem, provides any advantage, or used for any particular purpose. Further, a change in location is generally recognized as being within the level of ordinary skill in the art, see *In re Japiske*, 86 USPQ 70 (CCPA 1950). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Pitroda, Miyashita et al., Selker, Anderson et al. and Kurtenbach to obtain the invention as specified in the above claim.

***Allowable Subject Matter***

15. Claim 26 is allowed.

16. The following is a statement of reasons for allowance:

Relative to independent claim 26, the major difference between the prior art of record (Selker, Pitroda, Keekly, Jr. et al., Ono, Anderson, Kurtenbach and Miyashita et al.) and the instant invention, is that said prior art does not teach a method wherein if a user is inking from a drawing canvas and the inking crosses into the menu, inking still occurs on the canvas.

***Conclusion***

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEPHEN G. SHERMAN whose telephone number is (571)272-2941. The examiner can normally be reached on M-F, 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amr Awad can be reached on (571) 272-7764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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28 October 2008